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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
	)	
TRONOX INCORPORATED, *et al.*,	)	Case No. 09-10156 (ALG)
	)	
Debtors.	)	Jointly Administered
TRONOX INCORPORATED, TRONOX WORLDWIDE LLC f/k/a Kerr-McGee Chemical Worldwide LLC, and TRONOX LLC f/k/a Kerr-McGee Chemical LLC,	)	
Plaintiffs,	)	
v.	)	Adv. Pro. No. 09-1198
	)	
ANADARKO PETROLEUM CORPORATION and KERR-McGEE CORPORATION,	)	
	)	
Defendants.	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Intervenor,	)	
v.	)	
ANADARKO PETROLEUM CORPORATION and KERR-McGEE CORPORATION,	)	
	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO EXTEND ALL DEADLINES IN THE CASE MANAGEMENT ORDER

TO THE HONORABLE ALLAN L. GROPPER,
UNITED STATES BANKRUPTCY JUDGE:

Anadarko Petroleum Corporation and Kerr-McGee Corporation (collectively, the "Defendants") hereby file this response to the *Motion to Extend All Deadlines in the Case Management Order* (the "Current Extension Motion")[1] filed by Tronox Incorporated, Tronox LLC and Tronox Worldwide LLC (collectively, the "Plaintiffs") in the above-captioned adversary proceeding (the "Adversary Proceeding") and respectfully represent as follows:

PRELIMINARY STATEMENT

1. Throughout the course of this Adversary Proceeding, Defendants have consensually and repeatedly agreed to Plaintiffs' numerous and multiple requests to extend the deadlines in, and ultimately the duration of, this litigation. Indeed, Defendants have accommodated Plaintiffs' initial request for a ***nine-month extension*** of the agreed-upon trial schedule and Plaintiffs' subsequent request for a ***four-and-a-half-month extension*** of that trial schedule. Defendants have also agreed to Plaintiffs' requests to adjourn depositions which they sought to initiate over a year ago and to significantly increase the number of fact depositions to which each side would be entitled. These requests have been accommodated despite the fact that it was Plaintiffs themselves who so vociferously insisted on an expedited trial schedule and that such accommodations have caused Defendants to incur significant additional expense and delay the much anticipated day when they will be permitted to respond to Plaintiffs' unfounded allegations.

2. Indeed, Defendants have expended substantial effort, and tens-of-millions of dollars, preparing their defenses to the many unsubstantiated claims which Plaintiffs have repeated *ad nauseum* and with impunity in both the main bankruptcy case and this proceeding.

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[1] Adv. Pro. No. 09-1198, Dkt. No. 152.

Defendants have patiently awaited their opportunity to respond to Plaintiffs' many accusations—including their inflammatory and unchecked accusations of fraud—and to demonstrate the baseless and specious nature of those claims. Defendants submit that Plaintiffs have had more than ample opportunity to develop their claims and that the time has come to require them to move forward so that Defendants may finally have their day in court.

3. Defendants further submit that a blanket twelve-week extension of *all* deadlines in the Third CMO is not warranted, will prejudice Defendants' rights and will needlessly increase the already exorbitant costs of this litigation. In particular, the requested relief will prejudice Defendants by delaying Plaintiffs' identification of experts for another three months despite the fact that Plaintiffs have undoubtedly already identified those experts in accordance with the existing January 31, 2011 deadline for same. A blanket extension will also unfairly provide Plaintiffs with yet another three months—in addition to the 20 months they have already had—to prepare their expert reports while not affording Defendants any extension of the time period between the filing of those reports and the date on which they must respond to them. Moreover, Plaintiffs' purported justifications for the relief are based largely on matters that were clearly contemplated at the time of the entry of the Third CMO or on their own prior requests to expand the scope of discovery in this case. As such, Plaintiffs' requested extension is not warranted and should be denied.[2]

4. If, however, this Court determines that an extension of all or any deadlines in the Third CMO is in fact warranted, Defendants request that the Court grant at most an eight-week extension, that no extension be granted with respect to at least two of Plaintiffs' deadlines, and

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[2] Defendants remain willing to negotiate an extension of the Third CMO, however, there is no assurance that such agreement may be reached in advance of the February 1, 2011 hearing on the Current Extension Motion.

that the time between the filing of Plaintiffs' expert reports and Defendants' deadline to respond to such reports also be extended by 45 days.

RELEVANT BACKGROUND

5. On May 12, 2009, Plaintiffs commenced the Adversary Proceeding by filing a complaint against Defendants.[3] On June 15, 2009, the Court entered an order permitting the United States of America (the "United States") to intervene in the Adversary Proceeding.[4]

6. On June 15, 2009, the Court entered the first *Case Management Order* (the "First CMO") in the Adversary Proceeding, which required the completion of all fact discovery by March 30, 2010 and established a September 8, 2010 trial date.[5] On March 22, 2010, the Court entered the *Amended Case Management Order and Deposition Protocol Stipulation* (the "Second CMO"), which required the completion of all fact discovery by November 1, 2010 and established a June 15, 2011 trial date.[6] On August 27, 2010, the Court entered a *Second Amended Case Management Order* (the "Third CMO"), which required the completion of fact discovery by March 15, 2011 and established a December 5, 2011 trial date.[7]

7. On January 20, 2011, Plaintiffs' counsel informed Defendants' counsel that Plaintiffs intended to seek a twelve-week extension of all deadlines in the Third CMO. Defendants informed Plaintiffs that they would consider the extension and respond by January 25, 2011. Plaintiffs did not await Defendants' response, and, instead, filed the Current Extension

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[3] Adv. Pro. No. 09-1198, Dkt. No. 1.

[4] Id. at Dkt. No. 22.

[5] Id. at Dkt. No. 23.

[6] Id. at Dkt. No. 115. As Plaintiffs' counsel explained at the June 9, 2009 hearing: "If you recall, we had initially asked for a trial date in seven months from filing of the complaint, understanding that was certainly aggressive -- doable, but very aggressive. Anadarko requested two years. We've worked hard and we have now a proposal, obviously subject to Your Honor's approval and Your Honor's schedule, that would take us to trial in about fifteen months. In other words, the goal being to try the case right after Labor Day in 2010, again, subject to the Court's schedule, and then all the dates back off from there." 6/09/09 Hr'g Tr. 16:15-24.

[7] Id. at Dkt. No. 160.

Motion on January 24, 2011. The Current Extension Motion seeks Court approval of a twelve-week extension of all deadlines in the Third CMO.

8. On January 25, 2011, Defendants' counsel proposed an eight-week extension of certain discovery deadlines. Plaintiffs' counsel and the United States rejected Defendants' proposal and have made no counteroffer as of the date of this response.

RESPONSE

A Twelve-Week Extension Is Unwarranted

9. A twelve-week extension is not warranted, will prejudice Defendants' rights, and will increase the already exorbitant costs of this litigation.[8] Plaintiffs rely on the following bases in an effort to justify their requested extension: (i) the Third CMO allows the parties to take an additional 35 depositions (rather than the usual 10 per side permitted by the Federal Rules) before the current March 15, 2011 fact discovery deadline; (ii) the upcoming deposition of the United States's witness pursuant to Federal Rule of Civil Procedure 30(b)(6) ("Rule 30(b)(6)") cannot be completed because the United States has not yet produced all relevant documents; (iii) Plaintiffs' efforts to confirm a plan of reorganization and transfer the Adversary Proceeding to a litigation trust have impeded the progress of the litigation; (iv) Plaintiffs and Defendants are engaged in ongoing efforts to resolve all remaining privilege disputes; and (v) Defendants will not be prejudiced by a twelve-week extension of the Third CMO. Each of these rationales is either inaccurate or fails to justify the relief requested by Plaintiffs.

10. First, Defendants will be prejudiced by a twelve-week extension, as such extension will entitle Plaintiffs and the United States to delay the identification of their experts for an additional three months, rather than as currently scheduled on January 31, 2011. Given

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[8] Defendants recognize that extensions of deadlines in a trial schedule are often requested and granted as a matter of professional courtesy in complex litigation cases. Such courtesy, however, should not be abused by repeated requests for extensions that are not tailored to address justifiably unforeseen issues.

the short time that Defendants will have to respond to Plaintiffs' and the United States's expert reports, it is critical that Defendants be informed of the nature and type of experts whom Plaintiffs intend to present so that Defendants may identify and appropriately respond with their own experts. Given the large and complex nature of the Adversary Proceeding, the types of experts to be designated by the Plaintiffs is not patent, and Defendants should be immediately informed of their identity so that they may adequately prepare their defense. Moreover, any extension of the expert identification deadline will prejudice Defendants by affording Plaintiffs and the United States three more months to prepare their expert reports without any corresponding increase in the time between the filing of Plaintiffs' expert reports and Defendants' deadline to respond to such reports. Defendants will also be prejudiced more generally by the extension of the Third CMO deadlines because they will be required to needlessly incur additional defense costs and delay the day on which their defenses may finally be heard.[9]

11. Second, Plaintiffs' alleged bases for an extension do not in fact warrant the requested relief. Indeed, Plaintiffs' purported rationales are based largely on matters that were clearly contemplated at the time of the entry of the Third CMO or on their own prior requests to expand the scope of discovery in this case. For example, Plaintiffs refer to the current deposition protocol, which permits 33 depositions per side, as a reason for an extension.[10] However, it was Plaintiffs themselves who requested an increase from the 10 depositions otherwise allotted by the

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[9] Plaintiffs assert that the requested extension will not prejudice Defendants because Defendants themselves sought sanctions against the United States for failing to produce documents. Current Extension Motion at p. 4. Plaintiffs fail to mention, however, that despite Defendants' request for sanctions, they expressly declined to seek an extension of the trial schedule, and unambiguously stated "[W]e want this case resolved. We're not here voluntarily." 12/22/2010 H'rg Tr. at 48:19-23.

[10] Current Extension Motion at p. 3. Defendants have already taken or scheduled 24 of their potential 33 depositions. Subject to cooperation from Plaintiffs and the United States, Defendants believe they can complete all their depositions by the current March 15, 2011 deadline. Just as Defendants have had sufficient time and opportunity to complete their depositions in a timely manner, Plaintiffs and the United States should likewise be able to comply with the March 15, 2011 deadline.

Federal Rules.[11] Similarly, while Plaintiffs seek to justify the extension based on the upcoming Rule 30(b)(6) deposition of the United States, such party should not be rewarded with an extension of the Third CMO merely because it has failed to comply with its obligations to timely produce responsive documents.

12. Plaintiffs also fail to explain why continued discussions regarding privilege issues necessitate a twelve-week extension of the deadlines in the Third CMO, especially since Plaintiffs admit that such issues have been largely resolved.[12] Furthermore, issues relating to the confirmation of the plan and the transition to a litigation trust existed well before the entry of the Third CMO and do not justify the requested extension. In fact, at the recent December 22, 2010 hearing, Plaintiffs' counsel stated that the transition to the litigation trust was almost complete and was not expected to inconvenience the Court or the parties.[13] Accordingly, none of Plaintiffs' stated rationales warrant the requested twelve-week extension. In light of Plaintiffs' failure to establish sufficient cause for the extension, the significant time already consumed by the Adversary Proceeding, and the repeated and numerous accommodations already made by Defendants, the Court should deny Plaintiffs' request for a blanket twelve-week extension of the deadlines set forth in the Third CMO.

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11 In December 2009, Plaintiffs requested an increase in the number of allotted depositions from 10 to 25 depositions per side. Defendants reluctantly agreed to avoid undue delay in the Adversary Proceeding. Several weeks later, however, Plaintiffs and the United States informed Defendants that they agreed to share 225 hours of deposition time, and provide Defendants with 225 hours of deposition time in lieu of the 25 depositions per side to which the parties had previously agreed to. As a compromise, Defendants agreed to enter into a stipulation providing for a cap of 33 depositions per side.

12 Current Extension Motion at pp. 2-3.

13 The Court informed Plaintiffs' counsel on December 22, 2010, that "it would probably be to everyone's benefit to not have a third party come in, perhaps sometime also in January, and have a whole new set of ideas on how to prosecute this lawsuit and what to do and so forth." Plaintiffs' counsel responded: "I think we're nearing the end of that transition period and our goal, assuming we're retained as counsel for the trust, would be to transition the claim in a seamless manner so the Court and the parties are not inconvenienced by the transition." 12/22/10 H'rg Tr. at 39:1-13.

If Necessary, the Court Should Approve an Eight-Week Extension With Appropriate Caveats

13. If the Court determines that an extension is warranted, the deadlines in the Third CMO should be extended by no more than eight weeks with the following appropriate exceptions. First, Plaintiffs and the United States should not be permitted an extension of (i) the January 31, 2011 deadline to identify their experts and (ii) the March 15, 2011 deadline to add to disclosures for each alleged environmental and toxic tort site (and any other liabilities) that they, or their respective experts, intend to rely upon at trial. Second, the time between the filing of Plaintiffs' and the United States's expert reports and Defendants' deadline to respond to such expert reports should be extended by an additional 45 days. If Plaintiffs, the United States, and their respective experts are afforded additional time—on top of the 20 months they have already had—to prepare their expert reports, then Defendants should likewise have additional time to prepare their responsive papers.[14]

CONCLUSION

14. For the foregoing reasons, Defendants respectfully request that the Court deny the relief requested in the Current Extension Motion. If the Court determines that an extension is warranted, Defendants request that the Court grant at most an eight-week extension of such deadlines subject to the reasonable and appropriate exceptions described herein.

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[14] At the August 10, 2010 hearing wherein the parties reached agreement with respect to the Third CMO, Defendants agreed not to seek additional time to respond to Plaintiffs' and the United States's expert reports based on the size of those reports unless there were unforeseen circumstances. That agreement was based on the condition that the United States would substantially complete its document production by November 1, 2010. 8/10/2010 Hr'g Tr. at 16:17-18:5. That condition has not been met, and accordingly, Defendants now request a modest additional period to prepare their responsive reports.

Houston, Texas
Dated: January 31, 2011

/s/ Lydia Protopapas

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 31, 2011, a true and correct copy of the foregoing **Response To Plaintiffs' Motion To Extend All Deadlines In The Case Management Order** was served on the following counsel of record as indicated below.

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